

VIRGINIA:

IN THE COUNTY OF WASHINGTON

MARCH 24, 1998

BOARD MEETING

Reported by:

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BENNY WAMPLER: Good morning. My name is Benny Wampler. I'm Deputy Director for the Virginia Department of Mines, Minerals and Energy and I'm Chairman of the Gas and Oil Board. Let me tell you that the acoustics in here...only those of you in the back of the room can tell how good or how bad they are. These microphones are just recording devices. They're not amplifiers. So, I'd encourage you to seat...feel free to move your chair to where you can hear, if you can't hear. As we're talking, we will all try to speak up enough so that you can hear us today. I'll ask the Board members to introduce themselves, starting with Dennis.

DENNIS GARBIS: My name is Dennis Garbis. I'm from Fairfax County and I'm a public member.

CLYDE KING: My name is Clyde King. I'm from Washington County and I'm a public member.

BILL HARRIS: I'm Bill Harris from Wise County a public member.

SANDRA RIGGS: I'm Sandra Riggs with the office of the Attorney General.

MAX LEWIS: Max Lewis, a public member from Buchanan

County.

MASON BRENT: My name is Mason Brent. I'm from Richmond and I represent the Gas and Oil Industry.

TOM FULMER: Tom Fulmer, Department of Mines, Minerals and Energy.

BENNY WAMPLER: The first item on today's agenda, the Board will consider an appeal filed by Sarah Horn Day to the decision rendered by the Director of the Division of the Gas and Oil on an informal fact finding hearing. This is docket number VGOB-98-03/24-0640. We'd ask the parties that wish to address the Board in this matter today to come forward at this time and introduce yourselves for the record, please.

BRYAN SLAUGHTER: Good morning. My name is Bryan Slaughter. I'm a lawyer with Michie, Hamlett, Lowry, Rasmussen & Tweel. We're a firm in Charlottesville, Virginia. Miss Day, would you like to introduce yourself.

SARAH HORN DAY: Sarah Day.

MARK SWARTZ: I'm Mark Swartz. I'm here with Les Arrington and Claude Morgan.

BENNY WAMPLER: You may proceed, Mr. Slaughter.

BRYAN SLAUGHTER: Okay.

MARK SWARTZ: If I might just...there are two pooling applications on the docket today that pertain to this appeal, I

suppose, in a fairly direct sort of way. They're items three and four on the docket pertaining to unit S-36 and T-36, and Miss Horn's appeals pertain to permit applications within those units.

I would think that it would make sense for the Board to be aware of that and maybe take those up, if there's not an objection, in the course of this appeal hearing.

BRYAN SLAUGHTER: I don't have an objection. Not at all.

BENNY WAMPLER: Do you have a specific suggestion that we go to those?

MARK SWARTZ: Well, I don't want to preempt Mr. Slaughter. I mean, you know, I feel it's his appeal and...but I certainly wanted him to be aware of the fact that right behind him on the docket and now, I guess, sort of in this procedure, there is literally going to be a...you know, we talked some at the permit hearing---.

BRYAN SLAUGHTER: Uh-huh.

MARK SWARTZ: ---about the fact that because his client was asserting a claim, that it was a conflicting claim, that it would be necessary to pool and we have in fact done that, or at least filed the application.

BRYAN SLAUGHTER: I think the same issues are going to be raised in each one. So, it's fine with me.

BENNY WAMPLER: Okay.

BRYAN SLAUGHTER: I mean, if the Board has no objection, but if it would like to do it as they come up, that's fine also.

BENNY WAMPLER: It may be good just to move to the pooling applications then if that's okay with you?

BRYAN SLAUGHTER: Well, we'd like to address some of the permitting also, if that's okay.

BENNY WAMPLER: That's fine. That's fine.

BRYAN SLAUGHTER: Okay.

BENNY WAMPLER: Well, we'll go ahead then and address the matter that we have before us.

BRYAN SLAUGHTER: All right. How would the Board like to...would it like to hear testimony from Miss Day or would you just like to hear from me? How would you like this procedure to work?

BENNY WAMPLER: That's...that's up to you on whether or not to---.

BRYAN SLAUGHTER: Okay. I didn't know if there were any---.

BENNY WAMPLER: ---if you do plan to have her testify, you need to have her sworn in is the only thing that we'd ask.

BRYAN SLAUGHTER: Okay. All right. I would like to

have her testify if you could swear her in.

SARAH HORN DAY

having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. SLAUGHTER:

Q. Miss Day, if I could ask you a few questions. Did you receive a deed from Pocahontas Gas Company stating that...that showed a certain tract that they were going to pool...where they were going to pool gas out of that tract?

A. Yes, I did.

Q. Okay, and to your knowledge, what tract of land was that?

A. That was called on the deed as the Old Home Place.

Q. Okay, how do you---?

A. The Stilwells.

Q. How do you know it was the Old Home Place?

A. It was written in the deed.

Q. Okay. And that is because it said the Stilwell Home?

A. Home Place, yeah.

Q. Okay. Okay, and are you aware of the...the

property...the actual property in which the gas company wants to drill?

A. Yes, I am.

Q. Okay. Is that the same as the Old Home Place?

A. No, it is not.

Q. Okay. And is it true that the Old Home Place deed showed the coal...showed the severance of the coal to the McGuire/Hurt heirs, is that right?

A. Right.

Q. Okay, but you have seen nothing that shows the severance of the coal on the property in which the gas company wants to drill?

A. No.

Q. No, you have...you---?

A. I have not seen the---.

Q. Okay.

A. ---where they wanted to drill...the actual well.

Q. Okay. So, as far as you are concerned, who owns that coal?

A. I believe the Horn heirs own the coal.

BRYAN SLAUGHTER: Okay. For now, I will have some other questions, I believe, of the Pocahontas representative. For now that is our position, that they have not...the deed that they

presented in their application was not the actual deed that they...that was not the deed for the land that they wish to drill on...upon.

CLYDE KING: Mr. Chairman, I have a question, please?

BENNY WAMPLER: Mr. King.

CLYDE KING: Is this...is this the property location or is this---?

BRYAN SLAUGHTER: I believe so, sir.

CLYDE KING: Can you identify what you were talking about, the Old Home Place on this?

BRYAN SLAUGHTER: Well, I can't identify the Old Home Place because I was just going from the deed that was given to Miss Day by the gas company. That is not in the record, or at least I have not seen it in the record. I do not believe I have the entire application.

SANDRA RIGGS: Are we talking about tract 2-A on the tract identification sheet?

BRYAN SLAUGHTER: Miss Day would like to also...I believe so that it is, 2...it is the two, Exhibit A and Exhibit B. There are only 2-Js as one---.

SANDRA RIGGS: 2-J?

CLYDE KING: Is it J or A?

MARK SWARTZ: J as in John.

BRYAN SLAUGHTER: J as in John.

CLYDE KING: Okay.

BRYAN SLAUGHTER: Miss Day would also like to explain to the Board how the land lays in her area.

DIRECT EXAMINATION RESUMES

QUESTIONS BY BRYAN SLAUGHTER:

Q. Tell a little bit about the history of your family on that land, if you would?

A. I was raised on part of the land where they are wanting to drill the wells. Well, where my great grandfather's old home place was, there was what you call a spur, if you get any indication what I'm talking about, and then a gorge. Then there was another spur, another gorge, and then the next spur is where they're wanting to drill the well.

Q. And the initial piece of land that you are talking about is the old home place, which is---?

A. The first spur.

Q. Okay.

A. So, there are three spurs there, two gorges, beside the first spur is the old home place up there.

Q. And that is the deed that you saw given by the gas company initially?

A. Right.

MASON BRENT: How many property deeds are involved in this whole tract?

BRYAN SLAUGHTER: I believe it's...Mr. Swartz...I think they would be able to answer better the total number better than I would.

MARK SWARTZ: There is a large coal tract that is the severance deed at issue with these heirs. It's...I think, a 143 acre severance deed, severing the coal. It is a much larger tract than the tracts...the tract three in T-36 and the tract 2-J in...in S-36. I mean you can see those are fairly small tracts. The severance deed, as is typically the case, you know, will be way back in time and the tracts are much larger. So, I mean we have...we brought with us today...Mr. Arrington will be talking about it, but we have a map of the...of the coal tract, the 143 acre tract, which is a pretty big portion of one of these. You know, it is not so larger portion of another, giving the way it lays. But there is no way that the surface tracts and the oil and gas tracts, that the Linkous Horn heirs are talking about are going to match this because they are little pieces of this coal severance tract. So, you are not going to be able to over lay them, they were subsequent conveyances, obviously.

BENNY WAMPLER: Mr. Slaughter, do you have any objection

now having heard that representation to go forward, and let Mr. Swartz go forward with the two pooling applications, which would get all of this on evidence.

BRYAN SLAUGHTER: I don't have an objection.

BENNY WAMPLER: We will withhold, if that is okay with the Board, any ruling as to permit appeal.

BRYAN SLAUGHTER: Okay.

BENNY WAMPLER: And come back to that.

BRYAN SLAUGHTER: Okay.

BENNY WAMPLER: I believe that will allow you to get all the evidence in the record that you have a question about. It may answer some questions, hopefully, and allow you then to cross examine. Is that suitable to you?

BRYAN SLAUGHTER: Okay, that is fine.

MARK SWARTZ: Mr. Arrington needs to be sworn.

BENNY WAMPLER: I need to call it.

MARK SWARTZ: Oh, okay, I am sorry, I thought we had done that.

BENNY WAMPLER: No. Are you suggesting that we go ahead and call both?

MARK SWARTZ: Yes, please.

BENNY WAMPLER: Okay, we're going to go ahead and suspend any decision on the permanent decision at this point in

time, and go ahead and call the next two docket items for---. The Virginia Gas and Oil Board will consider a petition from Pocahontas Gas Partnership for pooling a coalbed methane unit identified as T-36, docket number VGOB-98-03/24-0625, and coalbed methane unit identified as S-36, docket number VGOB-98-03/24-0626, and we would ask the parties that wish to address the Board in those matters to come forward as this time.

MARK SWARTZ: I'm Mark Swartz on behalf on Pocahontas Gas Partnership, Les Arrington, and perhaps Claude Morgan.

BRYAN SLAUGHTER: May I ask if the permit hearing appeal is granted, then there is no...then you do not go to the pooling part, is that correct? Don't you have to be permitted before you can pool?

BENNY WAMPLER: Separate actions.

BRYAN SLAUGHTER: Which I realize it's separate, but isn't it...traditionally, doesn't the Board usually do the permitting before the pooling?

BENNY WAMPLER: No, sir.

BRYAN SLAUGHTER: All right.

BENNY WAMPLER: I just need you to identify yourself and her name for the record.

BRYAN SLAUGHTER: I am sorry. My name is Bryan Slaughter, I am the lawyer of Michie, Hamlett, Lowry, Rasmussen,

and Tweel, and---.

BENNY WAMPLER: Again, for the record.

SARAH DAY: Sarah Day.

BENNY WAMPLER: And if you would, just remind your witnesses that she has already been previously sworn, just trying to keep a record. And Mr. Swartz, you want to go ahead and help your witnesses sworn---.

MEMBER OF AUDIENCE: Excuse me. Can we have everybody speak up a little bit, so we can hear, please.

BENNY WAMPLER: We will do our best.

MARK SWARTZ: Rather than give you exhibits piecemeal, we will just give you the collection at one time here.

(Exhibits are handed given to Board Members.)

BENNY WAMPLER: You need to have your witnesses sworn.

(Witnesses are duly sworn.)

LESLIE K. ARRINGTON

QUESTIONS BY MARK SWARTZ:

Q. Les, can you state your name for the record, please?

A. Leslie K. Arrington.

Q. And who do you work for?

A. Consolidation Coal Company.

Q. And is...in the course of your duties, is one of your duties to prepare pooling applications, notices of hearings, and related exhibits for the Pocahontas Gas Partnership?

A. Yes, it is.

Q. Did you in fact prepare the notices of hearing, the applications, and the related exhibits for units T-36 and S-36?

A. Yes, I have.

Q. And have you passed out a packet of additional exhibits this morning?

A. Yes, I have.

Q. And have we also given the board a revised Exhibit A, page two with regard to unit S-36? You haven't done that?

A. Not yet.

Q. Okay. All right. We need to do that.

(Hands Board Members a revised exhibit)

BENNY WAMPLER: Les, do you have another one?

LESLIE K. ARRINGTON: Yeah.

MARK SWARTZ: Give each one of them. Yeah. Let's start a little differently because of the fact that we have an appeal than we normally would. What I would like to do is direct your attention to this...this map that we've passed out to the

board today.

Q. Is this a map of the...the coal severance tract?

A. Yes, it is.

Q. Okay, and is this tract...the coal under this tract in both applications owned by, under the terms of the severance deed, the McGuire and Hurt heirs?

A. Yes, it is.

Q. Okay. And is a portion of the surface and/or oil and gas of this tract owned by some of the Linkous Horn heirs?

A. Yes, it is.

Q. Okay. And is a part of this large coal tract in both of the units that we are talking about today?

A. Yes, it is.

Q. Okay. If we look at these plat maps that are in your applications, there should be one in each, if we look at the map of...the plat map for S-36. Okay?

A. Uh-huh.

Q. Okay, and I have tried to outline it in pen, I don't know if you all can see it, but is what I've outlined in pen on the plat map for S-36, the top portion of the coal tract?

A. Yes, it is.

Q. You see how that matches? So, if you use these

exhibits together, the well plat for S-36 and the larger map of the coal severance tract that we've given you today, you can see that the upper portion of the coal tract lies in this configuration in S-36, okay? And then if you turn to the same exhibit in the T-36 unit, you will notice that the lower portion...you can match up...well, on this one, you can match up these lines. It's pretty easy to see them, but the lower portion of the tract then catches the T-36 unit. Just to give you some idea of how this coal tract relates in the severance deed... relates to these two units.

Mr. Arrington, with regard to this coal tract, before you prepared the pooling applications, before you sought a permit application or permit applications, did you have someone do title research?

A. Yes, we did.

Q. Okay, and was that a law firm out of Tazewell?

A. Yes, it was.

Q. Who was that?

A. Altizer, Walk, and White.

Q. Okay, and did they in fact do title...coal title for the tract, the larger?

A. Yes, they did.

Q. Okay, and did they also do a oil and gas title?

A. Yes, they did.

Q. And in the course of doing that oil and gas title, did they identify the Linkous Horn heirs as having some oil and gas interest in these units?

A. Yes, they did.

Q. And did they also do surface---

A. Yes, they have.

Q. ---inquires?

A. Uh-huh. Yes, they have.

Q. Okay. With regard to the location of the wells, which...and the frac wells are actually shown on the well plats in the applications, correct?

A. They are.

Q. Is it true that neither well is in fact located on tracts owned by the Linkous Horn heirs at this point in time?

A. On their surface?

Q. On their surface.

A. That is correct, they are not.

Q. They are not. If you just...with regard to T-36, for example, the Linkous Horn heirs surface is which tract?

A. T-36, just a minute...2-J.

Q. Now, that is in which?

A. This is it.

Q. That is on T-36.

A. We are missing part of that one.

Q. Okay, and the well is being drilled on what tract?

A. T-36.

Q. Right.

A. Joe Nipper---.

Q. Okay, is who owns the surface?

A. ---tract, who owns the surface, that is correct.

Q. And in S-36, who owns the surface where the well is being drilled?

A. Harlan Osborne.

Q. Okay. So, in neither case do the Linkous Horn heirs or the Mrs. Day owns surface where the well is being drilled?

A. That is correct.

Q. Getting back to the applications now. Are both of these applications for pooling under Oakwood One rules?

A. Yes, they are.

Q. Okay. So, they only involve the drilling of frac wells at this point?

A. That is correct, they do.

Q. Okay, and the applicant here is who?

A. Pocahontas Gas Partnership.

Q. Is Pocahontas Gas Partnership a Virginia General Partnership?

A. Yes, it is.

Q. Are the partners in that partnership Consolidation Coal Company and Conaco, Inc.?

A. Yes, it is.

Q. And in both applications, is Pocahontas Gas Partnership requesting that someone be designated the Board's operator?

A. Yes, it is, Pocahontas Gas Partnership.

Q. Okay, is Pocahontas Gas Partnership authorized to do business in the Commonwealth of Virginia, is it registered with the Department of Mines, Mineral, and Energy, and does it have a blanket bond on file as required by law?

A. Yes, it does.

Q. In each of the pooling applications and notices, are the names of the people to be pooled listed in the notice of hearing?

A. Yes, they are.

Q. Okay. And in this instance, was Mrs. Day listed?

A. Yes, she is.

Q. Okay, in both notices?

A. Yes.

Q. Okay, and are the people to be pooled also listed in Exhibit B-3?

A. Yes, they are.

Q. And to the extent that we have addresses for those folks, are they set forth in Exhibit B-3?

A. Yes.

Q. And is the division of interest on each claimant listed in Exhibit B-3 also set forth?

A. Yes.

Q. As a percentage of the unit?

A. Yes.

Q. Okay. Do you want to add any respondents today or dismiss any respondents with regards to either of these applications?

A. No, we do not.

Q. Did you mail a notice of this...of these applications to all of the respondents that you had addresses for?

A. Yes, we did. We mailed that on February 20th of '98.

Q. And did you mail everybody listed on Exhibit B-

3?

A. Yes, we did.

Q. Okay. And have you filed the results of the mailing with the Board?

A. Yes, we have.

Q. So, they can tell by referring to a certification that you filed today, who picked up the mail, who returned it, who didn't?

A. Yes, correct, we did.

Q. Okay, you filed that this morning?

A. Yes.

Q. Did you publish public notices in regard to both of these, you know?

A. Yes, we did in the Bluefield Daily Telegraph on March 4, 1998.

Q. And have you filed certificates of publication with regard to those publications?

A. Yes, we have.

Q. Let's take Exhibit...lets take T-36 first, in terms of interest in the unit. There's an Exhibit A, page two in T-36, correct?

A. That's correct, it is.

Q. And the percentage of coalbed methane rights

that Pocahontas Partnership owns, has leased, or has previously pooled with regard to coal owners is what percentage?

A. A 100 percent.

Q. Okay, and with regard to oil and gas owners, what percentage has Pocahontas Gas Partnership acquired by lease or otherwise?

A. 65.0547 percent.

Q. And how much of the coal under these two units is...do you have coal leases for?

A. One hundred percent.

Q. Okay, and this application now with regard to T-36, you are seeking to pool zero percent of the coal claims?

A. That's correct.

Q. Because you have required leases?

A. Yes.

Q. And what percentage of the oil and gas interest are you seeking to pool?

A. 34.9453 percent.

Q. With regard to S-36, have you filed today an revised Exhibit A page two?

A. Yes, we have.

Q. There was a mistake in the original one?

A. Yes, it was.

Q. Okay. With regard to Unit S-36, what...what amount of coal claims to coalbed methane do you have under lease or have you otherwise acquired?

A. We have 100 percent of the coal leased, and we have 56.785 percent of the coalbed methane leased from that owner.

Q. From coal owners?

A. Coal owners.

Q. Okay. With regard to oil and gas, what amount of the oil and gas claims, the coalbed methane, have you leased from oil and gas owners?

A. 11.07029 percent.

Q. Okay. And what are the interest that are sought to be pulled by this application pertaining to S-36?

A. 43.2125 percent of the coal owner and 88.92971 percent of the oil and gas owners.

Q. Both of these units are eighty acre units?

A. Yes, they are.

Q. In both instances you are talking about drilling a frac well?

A. That's correct, we are.

Q. And is the production to come from the Tiller Seam and below?

A. Yes, it is.

Q. Okay. Basically the pool created by the Oakwood One rules?

A. Yes, it is.

Q. Do you have an Exhibit C in each of the applications which is a well cost estimate?

A. Yes, we do.

Q. With regard to T-36, what is the total estimated cost of the frac well?

A. Two hundred and fifty thousand four hundred and seventy-five dollars and twenty cents (\$250,475.20).

Q. And what is the projected total depth?

A. 2,206 feet.

Q. With regard to S-36, the projected cost of the frac well is what?

A. Two hundred and forty-five thousand and fifteen dollars (\$245,015).

Q. And the total depth?

A. 2,075 feet.

Q. Did you prepare both of these estimates?

A. Yes, I did.

Q. And when did you do that?

A. February 17th, 1998.

Q. With regard to lease terms, what are the lease terms that you have offered to people that you have obtained leases from and have offered to people that have not agreed to lease?

A. We offer a dollar per acre rental, with a five year term, with a 1/8 royalty.

Q. A 1/8 production royalty?

A. Production, that is correct.

Q. Have your...have your land people on your behalf mailed leases to Linkous Horn heirs and others in the unit?

A. Yes, they have.

Q. And obviously, a good number of those people have elected not to lease?

A. That's correct.

Q. With regard to Exhibit B-3 in terms of going forward here and paying royalty, or escrowing royalty, or calculating carried interest, or calculating participation numbers, does Exhibit B-3 allow a pretty straight forward calculation with regard to those matters?

A. Yes, sir.

Q. Okay, and essentially you have taken the acreage of the various tracts that is...are...is contained with the eighty acre unit?

A. That's correct.

Q. And you have reported that under acres in unit?

A. Correct.

Q. And you have divided the acres in unit by eighty acres?

A. We have, yes.

Q. And then you report that as a percent unit in the last column?

A. Correct.

Q. So, if for a royalty stream percentage, that would be the percentage you would apply, a carried interest percentage, or a participation percentage?

A. Particip...yeah, that is correct, it would be.

Q. And you have done that for Exhibit B-3 with regard to both of these?

A. We have.

Q. And there is also an Exhibit E which lists conflicting owners and claimants?

A. That is correct, it does.

Q. Which would require escrow?

A. It would require the royalty to be escrowed.

Q. Okay. And in this particular situation just dealing with Miss Day and the Linkous Horn heirs, is there...do

they have a conflicting claim that you report?

A. Yes, they do.

Q. Okay, and they are in fact listed on Exhibit E?

A. Yes, they are.

Q. Okay. And you would anticipate that the board order would require that their interest be escrowed?

A. Yes, we would.

Q. Lastly, have you submitted as Exhibit F, a proposed draft order with regard to each of these?

A. Yes, we have.

Q. Okay, which contains the basic provisions that you would expect to see in a order?

A. Yes, we have.

Q. Okay. The last questions I would have for you, are whether or not the frac well development that you proposed here is, in your opinion, a reasonable way to develop the coalbed methane?

A. Yes, it is.

Q. Okay. And obviously the coal owners, the Hurt/McGuire...I guess I have got it backwards. The McGuire/Hurt heirs, with regard to this coal severance tract have leased to you?

A. Their coal, yes.

Q. And they are in favor of coalbed methane development?

A. Yes.

Q. And their lease requires you in fact to pursue that at some reasonable pace?

A. Yes.

MARK SWARTZ: The last things that I would just point out to the Board, I have handed out just some portions of...of the Virginia Gas and Oil Act dealing with some sort of basic principles of the act. And I think sometimes we...because these issues don't come up all the time, we may have...tend to lose sight of why the law was passed, and basically what I've done is selected a few provisions with regard to construction, with regard to duties and responsibilities of the Board, with regard to pooling, just to kind of refresh everybody's memory as to the basic premise underlying the Virginia Gas and Oil Act; and that basic premise essentially was that the legislature made a decision for a lot of reasons that it would rather not delay coalbed methane development pending title arguments, but would rather allow that methane to be produced and if you look at Section 45.1-361, which talks about construction, it says in general that the provisions of the chapter shall be liberally construed so as to effectuate the following purposes: to foster

and encourage safe and efficient exploration for and development production and utilization, to provide a method of gas and oil conservation for maximizing exploration and development. The additional duties of the Board, some of which I listed here, include fostering and encouraging development, maximizing exploration, development, and production, and so forth, and then lastly I would direct your attention to portions of 45.1-361.22, which is the provision, that, specifically the third one down, which specifically deals with pooling coalbed methane gas wells.

And it is a mandatory provision, if you look at the statute text at A, it says the Board shall, and I think it drives home the principle that the legislature wanted to effectuate in this state; and that is, when they are conflicting claims to ownership and a claimant makes an application for pooling, the Board shall make an appropriate determination as to how that are to be pooled to allow the production to occur. And that is the whole basis...the whole basis of the law.

So, in summary I would recommend that the Board act favorably on the two pooling applications, T-36 and S-36. And that is all I have of Mr. Arrington at this point.

BENNY WAMPLER: Any questions from members of the Board of Mr. Arrington? Which of these exhibits do you intend to offer for the record.

MARK SWARTZ: All of them.

BENNY WAMPLER: Any objection?

BRYAN SLAUGHTER: I don't have any objections to that,
I would like to ask questions.

BENNY WAMPLER: You may ask then, cross examine the
witness.

CROSS EXAMINATION

QUESTIONS BY BRYAN SLAUGHTER:

Q. Mr. Arrington, I guess I am drawing your
attention to the map that...your exhibit, right in the center it
says Danny McClanahan, you see that?

A. Yes.

Q. That is...that whole entire part is his tract of
land, is that right?

A. That is correct, to my knowledge.

Q. Okay, to your knowledge, and he owns the...that
is...there is no, at least from this picture, no differential
between his ownership, at least on this map, is that correct?

A. That is correct.

BRYAN SLAUGHTER: Okay. If I can show the Board, this

is nothing more than a picture of the two, Exhibit A and Exhibit B laid on top of each other, just so it matches up. I believe this dotted line is the eighty acres, which is the tract of land.

Q. Mr. Arrington, if I could show this to you, I guess. Do you have any explanation as to why Danny McClanahan in the top portion, and this is right above here above the eighty acre line, Danny McClanahan here is the owner of the surface and the Linkous Horn heirs are the gas and oil owners? Whereas, below it's still the same tract of land that goes through right in the middle, Danny McClanahan owns the surface oil and gas?

A. Yes, we...yes, we caught that mistake...a mistake there on that tract, and I believe we filed it with Mr. Fulmer's Office, I'm not...I can't recall. I know we did make a mistake on that tract identification.

BRYAN SLAUGHTER: I would love to see that.

A. Okay.

Q. Do you also notice the same mistake has been made with the Lula Osborne?

A. On 2J?

Q. Yeah.

A. Yes.

Q. Okay, did you actually do this...these title searches yourself?

A. No, the title search was done by Altizer, Walk, and White.

Q. And they made a mistake here?

A. No, we did...we done the mapping in our office.

Q. You did the mapping?

A. Uh-huh.

Q. Okay, you know of any other mistakes that are on here?

A. No, other than the Danny McClanahan and the 2-J.

Q. But there could be other mistakes?

A. There could be.

Q. There could be. So, this was not...this mistake, you are sure, was not done by the Altizer firm?

A. No, when we drafted our tract identifications for this plat---.

Q. Okay, this is when you determined that---?

A. ---that's when we...yes, that is when we made the mistake, that is correct.

BRYAN SLAUGHTER: Okay. Mr. Fulmer, do you have the---.

LESLIE K. ARRINGTON: Do you have...I can't remember?

BRYAN SLAUGHTER: Does anyone on the Board have a question as to what I'm trying to point out?

BENNY WAMPLER: I think we understand.

CLYDE KING: I have a question, Mr. Chairman.

BENNY WAMPLER: Mr. King?

CLYDE KING: When was this originally done?

LESLIE K. ARRINGTON: The well permit?

CLYDE KING: Uh-huh.

LESLIE ARRINGTON: The well permit. I believe it was in November of '97. I believe it was November.

SANDRA RIGGS: Is the...I guess the question I have, is the issue that there are parties who are not listed and made a party to these proceedings, or is it just a question of who owns what?

BRYAN SLAUGHTER: I think the issue is the accuracy as to their mapping methodology, and possibly their title search.

SANDRA RIGGS: Well, that is my question, are we...are we saying that somebody didn't get notice of these proceedings or is it a dispute with respect to the underlying ownership?

BRYAN SLAUGHTER: It's...I believe it is to their permit. That they have a mistake, on its face, on its very face in their permit application. And because of that we can't...they don't have their lawyers here or the people who actually made the maps here, which show---.

SANDRA RIGGS: Well, the purpose of my question is this

Board doesn't make title determinations. So, if what we are getting to is a title question, that is one thing. If it is a notice issue, it goes to notice, then it's another. You see what I'm saying?

BRYAN SLAUGHTER: I realize that.

SANDRA RIGGS: Because the Board...the Board cannot make a title determination.

BRYAN SLAUGHTER: I realize a court of law needs to make a title decision.

SANDRA RIGGS: So, I am looking...right, exactly.

BRYAN SLAUGHTER: That is right.

SANDRA RIGGS: So, I am looking at whether you are saying there is a defect in the notice or whether...what you are saying is that somewhere within the internal boundaries of that drilling unit...the internal tracts aren't correct.

BRYAN SLAUGHTER: Yeah. I...I think it is the latter, that the internal tracts are not correct. I guess what I'm pointing out is it is the Board's job to consider the permits and that the permits need to be in order. And there is something on its face where the permit is not in order.

SANDRA RIGGS: The Board normally would not look at a permit unless it is brought up on appeal here, which is the first docket item that we have here.

BRYAN SLAUGHTER: Okay, okay. Which is what I'm doing now, I believe, because we are doing this all at one time.

SANDRA RIGGS: I thought we were in the pooling. Okay.

BRYAN SLAUGHTER: No, I have...my understanding was I could talk to Mr...he initially---

SANDRA RIGGS: Okay.

BENNY WAMPLER: We have got them all before the Board.

BRYAN SLAUGHTER: Okay.

SANDRA RIGGS: Okay.

BRYAN SLAUGHTER: Okay. So, just this...I thought he initially questioned him about the pool...I mean about the permitting and then I was going to get a chance to cross examine.

SANDRA RIGGS: All right. Okay.

BRYAN SLAUGHTER: And that is our position here is that there is something on the face of that application that is not correct, and while Mr. Arrington said he has corrected it, that is not in the record. And that seriously calls into question... it is Miss Day's position that it calls into question their entire methodology of their permitting process and the accuracy of that. And until that is rectified, this...the drilling should not commence.

SANDRA RIGGS: I guess the reason I'm confused is I have read the transcript below, and this was not a issue below. Is

this a new issue being brought up today?

BRYAN SLAUGHTER: It's...it was not brought up, right, below, but it is on the face of the permitting application.

SANDRA RIGGS: I thought the issue below was whether or not the permit impinged on Miss Day's royalty interest. That was the basis of her objection.

BRYAN SLAUGHTER: That was her initial objection, but that is not her...I was not her attorney at that point.

SANDRA RIGGS: Was that expanded in the informal conference before the hearings officer in making the decision he made on the permit?

BRYAN SLAUGHTER: I did not see it in there, no.

SANDRA RIGGS: That was my question.

BRYAN SLAUGHTER: And I believe it says the petition for appeal has to raise the issues from below. I didn't see it concerning the actual appeal. But nevertheless, and I realize that is...that it needed to be raised from below, but I would also say that if there is a problem on the face of the permit, that the Board can...still has the power to address that. I still also have some questions for Mr. Arrington.

CROSS EXAMINATION RESUMES

QUESTIONS BY BRYAN SLAUGHTER:

Q. Mr. Arrington?

A. Yes.

Q. Is it possible that the Horn heirs could own some surface where a well could go on in the future?

A. In the future?

Q. Yeah.

A. They...possibly they could.

Q. Okay. You could potentially decide to drop a well on the 2J Tract, is that correct? You don't know now?

A. Don't know now, no.

Q. Okay. And I guess since we are talking about the pooling now, what is your procedures for the escrow accounts?

A. The escrow accounts, once the well goes into production, the royalty attributable to the interest that we are pooling, seeking to pool today, will be put into the escrow account, the state escrow account.

Q. Okay. And is it right that production costs are taken out of that share first, before it goes into escrow account?

A. That is correct.

MARK SWARTZ: Production? You deduct production cost?

A. Well, transportation.

MARK SWARTZ: Well, you need to explain to them what

you take out or we are going to be here forever.

A. Okay. Okay. No, it is transportation cost, not---.

Q. It's not the cost of drilling the well?

MARK SWARTZ: You don't know. We'll talk to Claude.

A. We'll talk to Claude. I defer to Claude.

Q. I...could you please answer? I'm sorry.

A. I defer that answer to Claude.

Q. I know your lawyer is there, but if you could just answer---.

A. I defer that question to Claude.

Q. Okay. And what reports are...are made regarding the escrow account to the potential gas owners? Do you make a quarterly statement, a yearly statement, regarding how much is in each escrow account to the potential gas owner?

A. No, we do not.

Q. Okay. And with regard to your production lease, is the production cost of the well taken out of their share also?

A. I defer that to Claude.

Q. Okay.

MR. SLAUGHTER: Am I allowed to cross examine Claude?

MARK SWARTZ: Fine with me.

BENNY WAMPLER: That is fine.

BRYAN SLAUGHTER: I'm sorry, I don't know your last name?

CLAUDE MORGAN: Claude Morgan.

CLAUDE MORGAN

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY BRYAN SLAUGHTER:

Q. And Mr. Morgan, I believe you heard the questions---

A. Could you restate them please?

Q. Okay. With regard to the escrow account, is the money...is the cost of production of the wells taken out of the amount that goes into escrow?

A. It depends on whether it is a royalty escrow or whether there is a participation.

Q. Okay. And if there is a participation, what happens?

A. If there is a participation, then yes, cost of production would come out.

Q. Okay, if it is a royalty?

A. If there is a royalty, cost of production is not a deductible item.

Q. Okay. So, they get the full 1/8?

A. 1/8 with deductions for transportation cost.

Q. For transportation, okay. And that goes into the escrow through these...does the royalty owner or the...does the royalty owner get any notice of what is in that escrow account?

A. There is no notice sent directly to the owner. There is a filing with the escrow bank showing the units involved and the production involved with that. It is available for review.

Q. Okay. Is that...is that public record? That is public record?

A. To my knowledge, that is.

Q. Okay. And then in your production leases, I believe that Pocahontas ask the people to sign, are production costs pulled out of the 1/8 share that is offered in those leases?

A. Production costs are not.

Q. Okay, so they would get the full 1/8?

A. It would be 1/8 with a deduction for transportation.

Q. Okay.

MR. SLAUGHTER: That is all I have for those witnesses.

I would just note that there has been no explanation or, I believe Mr. Fulmer has not found the correction to the---

TOM FULMER: November 19, and it is---

BRYAN SLAUGHTER: Okay, could I see that, please?

BENNY WAMPLER: Are you saying there was a correction filed, Tom?

TOM FULMER: To the plat, yes.

BENNY WAMPLER: Would you give Mr. Slaughter...while he is looking at that, I want to go back to one thing, Mr. Arrington. when you were asked a question about future wells being drilled. This is an Oakwood I application, you would not anticipate any future under Oakwood I, I would assume?

MARK SWARTZ: Well, there is a problem here, I think. Claude is probably the better guy to address this.

BENNY WAMPLER: Okay.

MARK SWARTZ: Most of...well, all of the PGP units that are on the pooling docket today are frac units only. And they revolve around a trade line. Maybe I'll talk to...ask Claude a few questions and he can flush this out for you. Claude, why don't you just...rather than asking a bunch of questions, why don't you explain to the Board how we try to anticipate conflicts between various coal companies on developing a line that matched your grid lines, and how that is going to come back to haunt us

here. Just explain the problems to the Board.

CLAUDE MORGAN: Various leases were owned in this area by the Pocahontas Gas Partnership and by Buchanan Production Company. Mine boundaries were chosen as a line to clean up the overlapping leases and assignments were made between the two parties such that Pocahontas Gas Partnership would own the leases on one side of the mountain by mines boundary, and Buchanan Production Company would own the leases from the other side of the mine boundary such that any long wall panels involved with the production would be...supposedly at that time, wholly within Pocahontas Gas Partnership or wholly within Buchanan Production Company.

MARK SWARTZ: And the line we picked was a grid line on the Oakwood Field, correct?

CLAUDE MORGAN: The grid line on the Oakwood Field that matched with the existing mine boundaries. Since that trade was done, Consolidation Coal Company or Consol, Inc. acquired Island Creek Coal Company, who owned the coal on the other side of the lines. So, now the coal was owned by a common parent. The mine boundary has changed and now it appears that a long wall panel will actually extend across that. In order to operate under an Oakwood II, there will have to be operating agreements obviously put in place between Buchanan Production and Pocahontas Gas

Partnership to allocate in accordance with the Oakwood II, the production of this location. At this time, those agreements are not in place and that is the reason that we were pooling these under Oakwood I because they will be entirely frac production.

MARK SWARTZ: Now, come full circle back to the question you asked. The wells are going to be driven, and are in fact driven by a projected mine plan right now, is that correct?

CLAUDE MORGAN: That is correct.

MARK SWARTZ: And so it is, you know, the increased density wells that you see in many of our applications because of the long wall development, is that the kind of thing that ultimately they are likely to see in this area, Claude?

CLAUDE MORGAN: It is...it is likely to see an increased density, under these force poolings, we are not asking the Board to approve---.

MARK SWARTZ: I understand.

CLAUDE MORGAN: ---if any calls for any additional wells within this Oakwood I ruling. And we are not asking any participant to participate in the cost of any additional wells that would be drilled within this Oakwood I Rule.

MARK SWARTZ: But in response to Mr. Slaughter's questions of Mr. Arrington and of you, it would be foreseeable that there will be more wells in the future to deal with the long

wall development?

CLAUDE MORGAN: That is conceivable if the mine plan holds as it is.

SANDRA RIGGS: Does it not then follow that when you are ready to do that you would have to come back before this Board with a new application and new notice---?

MARK SWARTZ: We would have to repool, right.

SANDRA RIGGS: ---to go to Oakwood II, and everybody would get notice of that.

MARK SWARTZ: Right. We're...but because of ownership issues, we are not in a position to do that at this point. We going to have the stay...we are going to have to keep it simple.

SANDRA RIGGS: Under Oakwood I, there is one well per drilling unit, and that's all you're asking for right now, and that's the well shown on the plat?

MARK SWARTZ: Unless we've shown...on some of the applications that we will get to today there, I believe there is more than one well in a unit. There's an increased density frac well. In these particular applications, which are before you right now, that is not the case. The wells...the well we are asking for is shown in that.

CLYDE KING: Mr. Chairman, I have a question?

BENNY WAMPLER: Okay.

CLYDE KING: When Island Creek was sold to Consol, did that...were they the...who was the parent company of Pocahontas Gas before Consol?

CLAUDE MORGAN: Pocahontas Gas is a partnership between Consolidation Coal Company and Conoco.

MARK SWARTZ: And it is...that has been true before and after the Island Creek transaction.

CLYDE KING: All right.

MARK SWARTZ: What has happened is that Island Creek transaction has allowed mine development to cross this line and if you have a long wall panel that crosses the line, there is going to have to be some kind of operating agreement to allocate production between Buchanan Production Company and Pocahontas Gas Partnership, and we are going to have to think that through. We thought we had this problem dealt with and then the coal company changes names. So, that is...but that is the issue.

BENNY WAMPLER: Did you have some questions, Mr. Slaughter?

BRYAN SLAUGHTER: I have no further questions. I believe I would like to move into evidence, this is a type-written copy of the handwritten deed that Miss Day received from Pocahontas. I have underlined...she had...I would like the Board to receive this into evidence if it would. I have underlined in

red the Stilwell House, which is what Miss Day is referring to as the Old Homestead Tract. Is that correct?

SARAH DAY: Right.

BRYAN SLAUGHTER: And it is still her position... I... that the deeds that they are showing that covers this tract of land is not actually the deed that shows the severance, and it is her position that she should have some proof that they own the coal below that, in terms of actual deed for that piece of land showing the severance before they should be allowed to go ahead and drill the land. And I would also point out while it appears that they did make amendments to the McClanahan piece, they did not make amendments for the Lula Osborne, which I can see on these amendments which shows again on its face a problem with their permit. And until those problems are rectified and I think it seriously calls into question their methodology that they are using before making these maps. And I realize they want to drop these wells as quickly as they can, but I think that they should do...that all caution should be used before they go onto people's property and drop these wells. Do you have anything else to say? That is all we have.

MARK SWARTZ: We've got two comments. The error in the permit plats that Mr. Slaughter has brought to your attention, is a surface tract error, okay. And it appears to me to have been

corrected in the pooling application. So, I mean it was, you know, when Les filed the amendment in November to straighten it out on the plats in the permitting process. And we also, by the time we got to you all, it looks to me like it is straightened out here. And I would...with regard to the last comment that Mr. Slaughter has made, this is the coal tract. If you compare this to the plats you can see the Linkous Horn heirs are within this large severance deed of a hundred and forty-three acres, and that's the only evidence you got on the table this morning. With regard to that...the mapping appears to me to be consistent and to make sense. This is the coal severance deed. You are not going to have some subsequent coal severance deed for some little piece. This is the coal severance deed. Her title came out of this and we are not going to be able to cough up another severance deed. This is it.

And then my final observation, and again directing you to the statutes that I gave you pieces of today, the last...in the last section on there doesn't really deal with pooling, but it deals with permitting and, you know, my clients have in the permitting process certified that they have the authority to enter on the surface where they are going to drill the well. That is the certification. The surface that we are going to be entering on is not Miss Day's surface. These wells and these two

applications are not on her surface, you know, maybe in the future there will be some. We will be back, I am sure. Maybe there won't, but the wells that we are dealing with today are not on her surface...apparently she admits that they are not, has a concern that they might be in the future. But the only issue that's survived in front of Mr. Fulmer that's up in front of you today on the appeal, is whether or not these pooling applications and these wells impinge on her property rights. You know, there will be an escrow to escrow the money so that the Linkous Horn heirs can litigate this or settle with the McGuire/Hurt people. And the money will be escrowed as Claude described, and I mean this is no different than what this statute contemplates in terms of development. So, that's all I have with regard to the two pooling applications and the appeal.

BRYAN SLAUGHTER: Miss Day would also like to have...to know whether that she could access, if they do drill these wells, to the escrow account to have an accounting of the escrow account. So, that she can see what goes in and what they are taking out of that.

MARK SWARTZ: It's First Virginia Mountain Empire Trust Department, is---?

TOM FULMER: It's best to call the office and we will find that out.

BRYAN SLAUGHTER: Okay.

TOM FULMER: That is our procedures, so to speak.

BRYAN SLAUGHTER: We appreciate the Board's time. Thank you very much.

TOM FULMER: I would remind her that when she does call the office in regards to the escrow account, be sure that you have the docket number because if the Board should so rule, that is how the account will be set up by a docket number. So, in other words, we have that when we get to it, so to speak.

CLYDE KING: Mr. Chairman, I have a question of Mr. Slaughter?

BENNY WAMPLER: Mr. King?

CLYDE KING: Is basically what you're contesting is the deed and the...maybe the error that was made in---?

BRYAN SLAUGHTER: That error is secondary. I was just pointing that out before the Board. I guess what we are saying is...well, I know what we are saying, is that Miss Day has lived, and her ancestors have lived on this land for over a century. They know the land better than anybody. They saw the deed that said the Old Stilwell House. They know it as the Old Home Place deed, and they know that is not the same piece of property upon...that Pocahontas plans to drill the well. They know that...they know that they are separate. They are separated by a

mountain and then another ridge, and it does not seem right to her, it does not seem fair to her that they can come on...when they are not showing the...the correct piece of property that they can come on her land and do what ever damage they do to draw up the wells, in terms of the roads, going through her property, and drop the well onto her piece of property.

SANDRA RIGGS: Maybe I misunderstood, but I heard the testimony say there would be no improvements...surface damage to her tracts whatsoever.

BRYAN SLAUGHTER: There could be in the future. I mean---.

SANDRA RIGGS: Well, but that's the subject of a different proceeding that this---.

BILL HARRIS: Yeah, we can't---.

CLYDE KING: This permit today is not going to show any damage.

BENNY WAMPLER: It wouldn't be on her property is what has been represented to us today.

BRYAN SLAUGHTER: To her surface.

BENNY WAMPLER: To her surface property. The Board will make no determination as to the ownership issue.

BRYAN SLAUGHTER: I realize that is for the Court. That will be another day.

BENNY WAMPLER: That is right.

MAX LEWIS: Will there be any damages to her property pertaining to the pipe line?

LESLIE K. ARRINGTON: Not to my knowledge. I haven't permitted it that way for...on their surface.

BENNY WAMPLER: Well, the questions I was asking earlier identifies the fact that they do have a mine development going on in this area. There will be, as they have testified, additional, potentially additional wells...could be pipe lines. So, what we are dealing with today is what is before us today, and that is not before us today, that particular part of it.

MARK SWARTZ: And just for...so that you're aware of this, the surface owners, Mr. Arrington identified them, and they are not, you know, Linkous Horn heirs, at least their names don't sound like it, but the surface owners that these wells are identified. Obviously, we try to locate surface facilities on surface where we have an agreement with the surface owner to avoid these kinds of disputes. So, I can assure you that to the extent that we can stay off of her property, we plan on it. Okay, I mean sometimes you can't always, because of the mine plans and so forth, do that, but the standard operating procedure is to be on the surface of people we have an independent agreement with, and to stay off of the surface of people that we

would have to be arguing that we have mining rights. I mean, that's the modis operandi, you know, so to the extent that we can stay away from her surface, we are going to do it.

BRYAN SLAUGHTER: Just one quick question. Have they done any study showing the effects on the water table. I believe that is required?

MARK SWARTZ: Well, you know, I'm not going to reopen the permitting process here for stuff that wasn't raised and those issues was addressed in the permit. We didn't talk about that at the informal fact finding.

BRYAN SLAUGHTER: Okay.

MARK SWARTZ: And I would object to that at this point.

BENNY WAMPLER: Sustained.

DENNIS GARBIS: Mr. Chairman.

BENNY WAMPLER: Mr. Garbis.

DENNIS GARBIS: Miss Day, do you feel that you've had...I mean, do you understand what has transpired here, and do you adequately...do you adequately understand what the legislature of the Commonwealth of Virginia, how it outlines what our duties and responsibilities are. I just want to make sure that you understand everything that is going on because obviously you're a citizen and we want to take that all in account. But there are certain guidelines that we have to go by, and

understanding that there was an error, that error appears to have been corrected, but do you understand, you know, how these proceedings have gone? Are you satisfied that you had your day in court?

SARAH DAY: Well, I don't understand why that you would get twelve percent, and then have to pay out of that to help the proceedings of the well, and they would get eighty-eight percent, I don't understand about that.

BILL HARRIS: If I might, Mr. Chairman and Miss Day, I asked that question of one of the...well, I asked that question of one of the companies...gas company representatives, and they said traditionally, and I know this isn't a satisfactory answer probably, but traditionally if you look back a hundred years ago, two hundred years ago whenever mining was going on coal, gold, everything, for some reason the people who took the risk and the foresight to plan and do whatever, they got most of the profits. And it was always a royalty...if it's just 1/8, was always carved off and given to the people who owned the property. It is something that is just...I don't know, legally if it's in the books, but it is traditional that it is 1/8. Now, I don't know what anyone does to change that, but that is what it has been traditionally for years.

BRYAN SLAUGHTER: I think what her concern is that

she...that some portion of the proceeds are taken out of that 1/8, and she has talked...has talked to people and no one has really seen any substantial amount of money for either from the lease or in a escrow account, and that is worrisome to her.

MAX LEWIS: Well, if she don't participate in the drilling, she will get 1/8, that is just the rate.

BRYAN SLAUGHTER: I realize that---.

MAX LEWIS: But less transportation.

BRYAN SLAUGHTER: Right. She is...she is just yet to see an escrow account that has any significant amount of money.

CLYDE KING: There is an escrow account that has that money in it.

BRYAN SLAUGHTER: Do you have any other concerns? This is your---.

SARAH DAY: No, just what you've got there.

BRYAN SLAUGHTER: Okay.

BENNY WAMPLER: Mr. Brent?

MASON BRENT: May I ask Mr. Arrington a housekeeping question. When you filed the correction to the permit, who or what called your attention to the mistake?

LESLIE K. ARRINGTON: I don't remember. We found...we found...we just discovered the mistake and was trying to take care of it.

MASON BRENT: You all found it yourself?

LESLIE K. ARRINGTON: Yes, we did, that is correct.

MAX LEWIS: You all didn't say anything to him about that, or to the company that they had made a mistake?

SARAH DAY: No.

BRYAN SLAUGHTER: We had just realized that when we put them on top---.

SARAH DAY: There is still one more mistake that has not been corrected.

BRYAN SLAUGHTER: Yeah, there is still the Beulah Osborne one that from what I can see it has not been corrected.

SARAH DAY: Beulah Osborne.

MASON BRENT: That has not been corrected?

SARAH DAY: It has not been---.

BRYAN SLAUGHTER: That I have seen, I don't...from what Mr. Fulmer has given me, I don't know.

BENNY WAMPLER: Was the portion that you raised, was it corrected, then it...her---?

BRYAN SLAUGHTER: The McClanahan appears to be corrected.

BENNY WAMPLER: That was corrected.

MASON BRENT: But not the Osborne?

MAX LEWIS: Not the Osborne?

BRYAN SLAUGHTER: Not that I saw from what Mr. Fulmer gave me, I don't---.

TOM FULMER: What is the correction for?

MAX LEWIS: Filed from tract---.

BRYAN SLAUGHTER: Its for the 2I---.

TOM FULMER: Well, no, I know, but what is the correction for?

LESLIE K. ARRINGTON: Surface, is that what you mean?

TOM FULMER: Is it a different name?

LESLIE K. ARRINGTON: Yes, yes. Surface only.

BRYAN SLAUGHTER: I believe on one Beulah Osborne is surface only, and Linkous Horn has the oil and gas, and on Exhibit A, Beulah Osborne owns everything.

BENNY WAMPLER: Did Beulah Osborne receive notice?

LESLIE K. ARRINGTON: No, she did not, unless she was one of the Linkous Horn heirs, I can't...you know, I'd just have to look back.

MAX LEWIS: Is Beulah Osborne here?

BRYAN SLAUGHTER: We appreciate the Board's time.

MASON BRENT: I guess, Mr. Chairman---.

BENNY WAMPLER: Thank you, we're still---.

BRYAN SLAUGHTER: Oh, okay.

BENNY WAMPLER: --we're still wrestling with a couple

things trying to plan for Mr.---

MASON BRENT: Mr. Chairman, my question is if the permit is flawed, where do we go from here?

BENNY WAMPLER: That's what we need to sort out. I think they are trying to sort out that question about notice that I just asked because that notice issue determines whether it's flawed or not, more so than now.

MARK SWARTZ: Les, with regard to Osborne's surface, can you tell the Board whether or not you have an agreement with her?

LESLIE K. ARRINGTON: Yes, we do have an agreement with Beulah Osborne.

MARK SWARTZ: What kind?

LESLIE K. ARRINGTON: We have a surface agreement and a coalbed methane lease.

MARK SWARTZ: When you say surface agreement, do you have an easement?

LESLIE K. ARRINGTON: Yes, we do.

CLYDE KING: Mr. Chairman, do we need to make a ruling on her appeal or---?

BENNY WAMPLER: Yes.

CLYDE KING: Would that be included---

BENNY WAMPLER: We have three things, we have the

ruling on the appeal, and the two pooling decisions, so---.

CLYDE KING: How did that have to be worded?

BENNY WAMPLER: ---I'm just making sure all the questions---.

CLYDE KING: Is her appeal---?

SANDRA RIGGS: Take them one at a time.

BRYAN SLAUGHTER: Just to reiterate, I guess, I wasn't...I was just trying to point that there are mistakes just from the face and that raises concerns that there might be others.

BENNY WAMPLER: I understand, that is a good point, and certainly that's one the Board would direct Mr. Fulmer to try to make extraordinary efforts to ensure that these maps are correct when they come forward. Would you agree that the pooling applications, and I'm not trying to put you in a box, but once those are dealt with, the first issue is essentially moot as to ownership since the ownership is not---?

BRYAN SLAUGHTER: I can't make that...I won't agree to...I mean, just because I don't know the pooling procedure well enough---.

BENNY WAMPLER: I understand, I wasn't trying to put you in a box.

BRYAN SLAUGHTER: ---I'm not saying yea or nay.

BENNY WAMPLER: As to...I'm going to...Board, what I'm going to do is call the two poolings first because that's...I think that is essential to the ruling on number one, or the first item that we had. As to unit identified as T-36, docket number VGOB-98-03/24-0625, I...do we have a motion. Well, we combined those and S-36 docket number VGOB-98-03/24-0626. Do I have a motion on those two?

CLYDE KING: I so move, Mr. Chairman.

DENNIS GARBIS: I second.

BENNY WAMPLER: Move for approval?

CLYDE KING: Yes.

BENNY WAMPLER: Is that the nature of the motion. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(Members signify by saying yes.)

BENNY WAMPLER: Opposed say no.

MAX LEWIS: No.

BENNY WAMPLER: One no. As to the informal fact finding hearing appeal that the division directors decision docket number VGOB-98-03/24-0640, do I have a motion?

MASON BRENT: Mr. Chairman, I move that we deny the appeal.

BENNY WAMPLER: And denial based on that being moot, is that---?

MASON BRENT: Right.

(Member of the Audience): What number do you have there, or are you talking to---?

BENNY WAMPLER: The first one that was on that agenda, Docket Number VGOB-98-03/24-0640.

(Member of the Audience): All right.

BENNY WAMPLER: Do I have a motion?

DENNIS GARBIS: Are you looking for a second?

BENNY WAMPLER: Yes.

DENNIS GARBIS: I'll second it.

BENNY WAMPLER: Motion and second, any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(Members signify by saying yes.)

BENNY WAMPLER: Opposed say no?

MAX LEWIS: No.

BENNY WAMPLER: No? Thank you very much.

CLYDE KING: I think her...I think she's going to be protected, it's just a matter of court decisions.

BRYAN SLAUGHTER: Thank you very much.

BENNY WAMPLER: Thank you. Thank you very much. The next item on the Board's agenda is an appeal that was filed by Mr. and Mrs. John Street to the Divisions Director's Decision. This is docket number VGOB-98-03/24-0641. Mrs. Street called me and informed me that her husband had a heart attack, and I told her that we'd have had to go ahead and call the case, but that we would continue that because there wasn't time to get the notice out to everyone. Did anyone come here today to appear on...in regard to that case, I don't want to deny you from having something to say?

(No audible response.)

BENNY WAMPLER: Okay. The next item on the agenda the Board will consider a petition by Pocahontas Gas Partnership for a coalbed...to pool a coalbed methane unit identified as W-35, this is docket number VGOB-98-03/24-0627. We would ask the parties that wish to address the Board in this matter to come forward at this time. You are invited to move up closer, all of you, so you can hear better, I know it is difficult.

MARK SWARTZ: I'm Mark Swartz and Les Arrington appearing for the applicant Pocahontas Gas Partnership, I would point out, Mr. Chairman, that there are only two of the applications today are for both Oakwood I and II, and this applicant is one of them, and then if you go to item number

fourteen on the docket, that is the other one. They are sort of companion units that involve some of the same exhibits and I would recommend if there is no objection, that maybe we would...it would make sense to move things, to consolidate item five, which you just called, with item fourteen for hearing?

BENNY WAMPLER: Any objection from members of the Board to doing that, or anyone that is here or has appeared? Does everyone now understand what he is asking to do? Since these are Oakwood I and II orders that he is planning to ask for pooling, he is asking to combine those so he can take them...take them up at the same time. That other docket number, I will go ahead and call it and see if we have an objection to that.

The Board will consider a petition from Pocahontas Gas Partnership for pooling of coalbed methane unit identified as X-35, and this is docket number VGOB-98-03/24-0636. We would ask the parties that wish to address the Board in that matter to come forward also. Any objection to combining those? You may proceed, Mr. Swartz.

MARK SWARTZ: Before we get going, I think it makes sense to have Les pass out the exhibits.

BENNY WAMPLER: Remind the witnesses they have under... already sworn and still under oath.

LESLIE K. ARRINGTON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, you want to state your name again?

A. Leslie K. Arrington.

Q. Who do you work for?

A. Consol.

Q. Did you participate in preparing the pooling applications for X-35 and W-35?

A. Yes, I did.

Q. Did you prepare the notices, the applications, and the related exhibits that the Board has before it today?

A. Yes, I have.

Q. And you signed the notices and applications, have you not?

A. Yes, I have.

Q. Who is the applicant with regard to both of these units?

A. Pocahontas Gas Partnership.

Q. And is PGP a Virginia General Partnership whose two partners are Consolidation Coal Company and Conaco, Inc?

A. Yes, it is.

Q. In both units, is the applicant requesting that Pocahontas Gas Partnership be the Board designated operator?

A. Yes.

Q. Is PGP authorized to do business in the Commonwealth of Virginia; is it registered with the Department of Mines, Minerals, and Energy; and does it have a blanket bond on file as required by law?

A. Yes.

Q. Okay, in regard to both of these applications, are the people that are sought to be pooled listed on the first page of the notice of hearing?

A. Yes, they are.

Q. Okay. And are the people who are sought to be pooled also listed in Exhibit B-3?

A. Yes, they are.

Q. Did you mail copies of the paper work to the respondents?

A. Yes, I did.

Q. And what have you filed with regard to those mailings?

A. We have filed a affidavit of due diligence with Mr. Fulmer's Office.

Q. Okay, and this morning, have you also given a

certificate of mailing to the Board members?

A. Yes, I have.

Q. So, that they can track, you know, when the stuff was mailed and when it was signed for and so forth?

A. Yes, we did.

Q. Okay, was there a publication?

A. Yes, there was in the Bluefield Daily Telegraph on March 4th, 1998.

Q. With regard to both units?

A. Yes.

Q. And what was published?

A. The notice of hearing.

Q. Okay, do you wish to add any with people as respondents to either of the units, or dismiss any people?

A. No, we do not.

Q. Okay. Now, both of these units you are seeking to pool under Oakwood I and Oakwood II?

A. Yes, it is.

Q. Okay, and toward the end of both of the applications there's...there's a map, Exhibit G, is there not?

A. That is correct it is.

Q. Okay, and that map shows the unit in relation to a partial mine plan?

A. It does.

Q. And also in relation to other degas wells that have been...that are either projected to be drilled or have been drilled in the course of degassing in advance of mining?

A. That is correct.

Q. Okay, and the last page of each application, which is entitled Exhibit G, page one, is it the same in each application?

A. Yes, it is.

Q. Except for the heading?

A. Except for the heading and the interest within each unit, of what the...each panel.

Q. But the photocopy of the document is the same document except for the heading?

A. That is correct, basically.

Q. Okay, and referring you to Exhibit G, page one, does it set forth the percentages of each panel...each long wall panel, and there are three of them, within both of the units?

A. Yes, it does.

Q. And then does it allocate cost, and we will come back to cost, but does it allocate cost based on those percentages by panel to each unit and then total the allocated cost?

A. It does.

Q. And with regard for example to X-36, I guess it is---?

A. 35.

Q. ---35, what is the total allocated cost from the three panels?

A. Just a moment. Four hundred twenty thousand, eight hundred dollars and twenty cents (\$420,800.20).

Q. Okay. And with regard to unit W-35, what is the total allocated cost?

A. A hundred and thirty-nine thousand, twenty-six dollars and fifty-two cents (\$139,026.52).

Q. These...each of these units is an eighty acre unit?

A. They are.

QQ. And the gas sought to be produced is the pool below the Tiller Seam?

A. That's correct, it is.

Q. Turning to W-35, there is a Exhibit A, page two, correct?

A. That's correct.

Q. And that's...let's turn to that to look at the interest that you have acquired and the interest you are seeking

to pool. How much of the coal under the unit is leased, just with a coal lease?

A. 100 percent.

Q. Okay, how...what percent of the CBM rights of the coal owners has been leased?

A. 100.

Q. Okay, and what percent of the CBM claims or rights of the oil and gas owners has been leased?

A. 58.2375 percent.

Q. Okay. And what is the interest that is sought to be pooled and what is the percentage of that interest?

A. The interest is the oil and gas interest, it is 41.7625 percent.

Q. I would like to make the same inquiry with regard to X-35, how much of the coal under X-35, under that eighty acre unit, is subject to coal leases?

A. 100 percent.

Q. Now, I am talking about coal leases the Tiller and below?

A. That is correct.

Q. Okay. How much of the oil and gas...what portion of the oil and gas interest have you obtained coalbed methane leases from?

A. 74.0875 percent.

Q. And what percent of the coal owners have you obtained coalbed methane leases from?

A. 100 percent.

Q. Okay. And what is the interest that you are seeking to pool and the percentage of that interest?

A. It is the oil and gas interest and that interest...that percentage is 25.9125 percent.

Q. Now, let's take a look for a moment---

BENNY WAMPLER: Can I interrupt you for just one second, please, while you are on that.

Q. Yes.

BENNY WAMPLER: You are in the Exhibit...or you are in W-35...or X-35?

MARK SWARTZ: X-35.

BENNY WAMPLER: In X-35 on Exhibit A, page two?

MARK SWARTZ: Right.

BENNY WAMPLER: Item two under percentage of coalbed methane rights not on...you have all of it leased...100 percent, right?

MARK SWARTZ: Correct.

BENNY WAMPLER: And you have 25...you have not leased 25.9125 percent of the oil and gas, correct?

MARK SWARTZ: Correct.

BENNY WAMPLER: All right.

MARK SWARTZ: The way these relate, if one says a 100 percent---.

BENNY WAMPLER: Right.

MARK SWARTZ: ---then two should be zero.

BENNY WAMPLER: Right.

MARK SWARTZ: They should...or they should add up to a hundred.

BENNY WAMPLER: Right.

Q. Let's just turn to B...Exhibit B-3 pertaining to X-35, which would be the next page---.

A. Uh-huh.

Q. ---and just talk about this for a minute. Is there an Exhibit B-3 in both applications?

A. Yes, there is.

Q. And is it organized the same?

A. Yes, it is.

Q. Basically, it lists the people that are unleased and need to be pooled?

A. Correct.

Q. It gives their net acreage within the eighty acre unit?

A. It does.

Q. And then it makes a calculation interest in unit?

A. It does.

Q. And how is that calculated?

A. Divides their acreage by eighty.

Q. Okay.

A. And its percent within unit.

Q. Okay, and then there are three columns, one for each of the long wall panels, correct?

A. Correct.

Q. And the percentage under thirteen east, fourteen east, and fifteen east, on Exhibit B-3 represents the percent of the panel within the unit, correct?

A. That is correct, it does.

Q. So, basically you take the amount of acreage in a unit on top of the total acreage in the panel, do that calculation and that is how you get this percentage?

A. Correct, yes.

Q. Okay, and then under each of long wall panel headings, is there a similar calculation for the interest of each claimant?

A. Correct, within each individual long wall panel.

Q. And then are these the divisions of interest that would pertain to the allocation of royalty, the allocation of costs in case of a participation, and the allocation of costs on a carried interest?

A. It would.

Q. So, those are the numbers you would use for those kinds of calculations?

A. Yes.

Q. And that would be true of Exhibit B-3 in both applications?

A. Yes.

Q. Also, staying with Exhibit X-35, is there a...an Exhibit C, estimated cost per well?

A. There is.

Q. And what is the estimate for X-35, if you can read it?

A. It is two hundred and twenty-eight thousand three hundred and thirty-nine dollars (\$228,339).

Q. Okay. And then is there a similar estimate in the W unit?

A. Yes, it is.

Q. Okay, and have you basically in Exhibit G, page one taken a...taken five frac wells per panel?

A. Yes, we have.

Q. And allocated those costs?

A. Yes, we did.

Q. Continuing on in Exhibit E...in X-35 to Exhibit E, is this a list of the folks whose claims are in conflict?

A. It is.

Q. And would require escrow?

A. Yes.

Q. And is there such a list in both of these applications?

A. There is.

Q. And lastly, with regard to the Exhibits, does each application have a proposed order?

A. Yes, it does.

Q. Which has the general terms that you would normally expect to see?

A. It does.

Q. With regard to people that you have not leased, what terms would you offer?

A. For coalbed methane lease, a dollar per acre rental, a 1/8 royalty with a five year term.

Q. The target formation for the frac wells would be the Pocahontas Three?

A. That is correct, it would be.

Q. And ultimately though, the gob gas would produce from the entire reservoir that was created in the Oakwood II rules?

A. That is correct.

Q. Lastly, is it your opinion that the plans for coalbed methane development disclosed by each of these applications is a reasonable plan or method to remove the coalbed methane from these units in advance of mining so that it can be captured and sold?

A. Yes, it is.

Q. That is all I have.

BENNY WAMPLER: Any questions of this witness from members of the Board?

(No audible response.)

BENNY WAMPLER: You have anything further, Mr. Swartz?

MARK SWARTZ: No.

BENNY WAMPLER: Take these one at a time. As to unit identified as W-35. Do I have a motion?

MAX LEWIS: I make a motion we approve the application.

BENNY WAMPLER: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor signify by saying yes.

(All members signify by saying yes.)

BENNY WAMPLER: Opposed say no. As to unit identified as X-35, do I have a motion?

MAX LEWIS: I'll make a motion to approve it.

BENNY WAMPLER: Motion to approve.

MASON BRENT: Second.

BENNY WAMPLER: Second, any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor signify by saying yes.

(All members signify by saying yes.)

BENNY WAMPLER: Opposed say no.

(No audible response.)

BENNY WAMPLER: You have approval. The next item on the agenda the Board will consider a petition from Pocahontas Gas Partnership for pooling of coalbed methane unit identified as X-36. This is docket number VGOB-98-03/24-0628. We would ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington. Might make...might make sense to consider doing W-36 as well, which is the next item. The reason for that is the tracts kind of overlap

since these units are stacked and that the information is going to be at least pretty similar.

BENNY WAMPLER: Any objection to that, Board Members?

(No audible response.)

BENNY WAMPLER: I will also call the next item is petition for Pocahontas Gas Partnership for pooling of coalbed methane unit identified as W-36. This is VGOB-98-03/24-0629 docket number. So, we now have called X-36 and unit W-36. If any of the parties here wanting to address the Board on W-36, please come forward.

MARK SWARTZ: Les, I would remind you that you have been sworn and still under oath.

LESLIE K ARRINGTON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Want to state your name, please?

A. Leslie K. Arrington.

Q. Who do you work for?

A. Consol.

Q. Did you draft the notice of hearing, and

applications, and related exhibits with regard to this pooling applications W-36 and X-36?

A. Yes, I did.

Q. And did you sign them?

A. Yes, I did.

Q. Did you cause these to be mailed?

A. Yes, we did by certified mail, return receipt requested, on February 20th, 1998.

Q. And have you filed the certification of mailing with the Board this morning?

A. Yes, we have.

Q. Did you cause the notices to be published?

A. Yes, we did, in the Bluefield Daily Telegraph on March 4th, 1998.

Q. And have you filed certificates of publication?

A. Yes, we have.

Q. Are both of these units eighty acre Oakwood I units?

A. Yes, they are.

Q. And in both of the applications, is Pocahontas Gas Partnership the applicant and is it also seeking to be designated as the Board's operator?

A. Yes.

Q. Are the partners in Pocahontas Gas Partnership, Consolidation Coal Company and Conoco, Inc.?

A. Yes, it is.

Q. Is Pocahontas Gas Partnership authorized to do business in the Commonwealth, is it registered with the DMME, and does it have a blanket bond on file?

A. Yes, it does.

Q. Are the names of the people you are seeking to pool listed both on the front page of...or the first page of the notice of hearing and Exhibit B-3?

A. Yes, they are.

Q. With regard to either of these applications do you want to add anybody as a respondent or subtract anybody?

A. No.

Q. In both instances, we are talking about eighty acre units with frac wells to produce from the deep coal below the Tiller?

A. That is correct.

Q. Do you have Exhibit C, well estimates, in each of the applications?

A. Yes, we do.

Q. Why don't we take X-36 first, what is the amount of that well estimate?

A. Two hundred...two hundred and thirty-four thousand, three hundred and seventy-four dollars and sixty-five cents (\$234,374.65).

Q. And the projected depth?

A. 1,849 feet.

Q. And in the W-36 Unit, what is the estimate?

A. Two hundred and forty-eight thousand, one hundred and ninety-two dollars (\$248,192).

Q. When we look on the plat map, if you will turn to the plat map for both of these units. In the W-36 unit, there are two wells proposed?

A. That is correct, there is.

Q. Is that because of a mine plan?

A. That is correct, it is.

Q. And in terms of allocation of costs, how many wells are you seeking to allocate to someone who might elect to participate?

A. One well.

Q. In the X-36 Unit, how many wells are proposed?

A. One well.

Q. Well, at least on your map it shows one.

A. One, uh-huh.

Q. Okay. Do Oakwood I units have something called

a drilling window?

A. Yes, they do.

Q. Okay, and with regard to X-36, is that proposed well within the drilling window?

A. Yes, it is.

Q. Okay, and with regard to W-36, does it appear that the proposed well may actually be outside the drilling window?

A. They are.

Q. Is there a mechanism in the Oakwood I field rules to allow for drilling of wells outside the drilling window?

A. Yes, it is.

MARK SWARTZ: What I would point out to the Board is the...this item which contains two pages, and has Mr. Wampler's familiar signature on the second page, it is part of the Oakwood field rules or...which I think was entered in '90 or '91 if I'm not mistaken, but I would direct your attention to the first paragraph numbered three which talks about minimum distances from nearest outside boundary of a drilling unit, and then the second sentence of which says any coalbed methane well proposed to be drilled closer to a unit boundary than three hundred feet....there is a three hundred foot drilling window, shall require a location exception order from the Virginia Oil and Gas

Inspector. Then if you turn to the next page at the top, there is a paragraph numbered seven, which is also from the Oakwood I order, and it says that the Virginia Oil and Gas Inspector may consider and grant locations for exceptions on a case by case bases for proposed coalbed methane gas wells drilled in the Oakwood Coalbed Methane Gas Field. And I would simply bring this to your attention because...well, if you don't think about the drilling window, it may not have been obvious to you that these wells...are outside of it, and I am just pointing that out to you and that there is a mechanism for us when we are seeking a permit to provide mine plan data to Mr. Fulmer that you all have facilitated to allow that to happen. The other exhibit I have provided to you is simply again a couple of extracts from code provisions which allow you to do what you did. You gave the Oakwood rule just to kind of refresh your recollection in that respect. And particularly the one that is important is 45.1-361.20 which allows the Board at 5-C to accommodate mine development plans, and make well spacing agree with mine development plans. So, that I would just sort of point that out to you as the mechanism that will that we're going to pursue with Mr. Fulmer's office to locate those wells in those locations, if we haven't already done it.

Q. With regard to the Exhibit A page 2, the sort of

standing in each of these units, lets start with X-36, the amount of coal leased within the unit?

A. 100 percent in both.

Q. Okay, and the amount of...in staying with X-36, the amount of the percentage of the oil and gas claims to coalbed methane that you have obtained leases for?

A. 100 percent of the coal.

Q. Right, and how much of the oil and gas?

A. 94...in X-36, 94.625 percent.

Q. Okay, and what interest are you seeking to pool?

A. 5.375 percent.

Q. Of the oil and gas?

A. Oil and gas.

Q. Okay. Turning to the W-36 Unit, you have already indicated you have a 100 percent of the coal leased, what percentage of the coal owners have you obtained coalbed methane leases from?

A. 100 percent.

Q. And of the oil and gas owners?

A. 60.4125 percent.

Q. And what interest are you seeking to pool and what percentages in the W-36 Unit?

A. 39.5875 percent.

Q. With regard to these units, each application has an Exhibit B-3?

A. Yes, it does.

Q. And since this an Oakwood I Order, there is only one percentage?

A. That is correct it is.

Q. And is that percentage calculated by taking the acreage, the net acres in the unit and dividing it by eighty?

A. Yes, it is.

Q. And that percentage then...that one percentage would be relevant to royalty allocation, cost allocation if there is a participation, and carried interest allocations?

A. It would.

Q. And that is true for both situations?

A. Yes.

Q. And I assume that this probably requires escrow?

A. Yes, it does.

Q. And is there an Exhibit E which sets forth the conflicting owners that require escrow in each of the units?

A. Yes, it does.

Q. Is the plan of development for these two units, which is disclosed by the exhibits, attached to these applications, in your judgment a reasonable plan to remove

coalbed methane gas from the Pocahontas III Seam in advance of mining and capture it for sell, as opposed to venting it?

A. Yes, it is.

Q. That is all I have.

BENNY WAMPLER: Questions from the Board?

CLYDE KING: Mark, I have a question, please?

MARK SWARTZ: Okay.

CLYDE KING: Mr. Chairman, if I may? In X-36, are those...what is the little dotted, is that the...right up here...is that an X-36---

MARK SWARTZ: Is that in X-36?

CLYDE KING: W...excuse me, W-36.

MARK SWARTZ: Oh, okay, W. I think that's a road?

LESLIE K. ARRINGTON: Yes.

CLYDE KING: Are you going to drill it in the middle of the road, I mean?

LESLIE K. ARRINGTON: That's one of our proposed access roads.

CLYDE KING: Oh, okay. That is not a road, that is your road?

MARK SWARTZ: It is not a state road, no.

LESLIE ARRINGTON: Right.

MARK SWARTZ: That would be a great drilling site, but

I don't think we could do that. Good question, though.

BENNY WAMPLER: Is there some way you can describe the big picture here of the number of infringements in this area of the three hundred foot window, the exceptions that you---?

SANDRA RIGGS: Locations.

BENNY WAMPLER: Location exceptions?

(Review plats and maps.)

MARK SWARTZ: It looks like the rest of them were planned to be within the window, not scaling them. The possible ones...there were four that looked close...W-37, X-37, B-36, and Y-37, and we have just...well, Y-37, forget it, that is not a problem. We have just scaled them, and they are either clearly more than three hundred feet or close enough that it looks like they were planned to be within the window. So, and I...so, I don't think they're...to answer your questions, I think you're seeing...you are seeing the ones that clearly require an exception, and the other ones we have tried to locate within the window. And I believe they are...going forward today.

BENNY WAMPLER: Now, the other question is under Oakwood I. Oakwood I contemplated one well per unit, now in this case you have two wells?

MARK SWARTZ: Right, and Mr. Arrington has testified that...to the extent anyone participates in those costs of the

second well would not be included in the participation costs, which has been our standard procedure.

BENNY WAMPLER: Well, we haven't had that as standard procedure under Oakwood I. We've only had one well per unit, I believe.

MARK SWARTZ: I am not sure that is the case. I mean, I would have to---.

SANDRA RIGGS: It is a correlative rights issue because when you get to Oakwood II, the density doesn't matter because you have isolated the long wall panels and you're producing off of the panels. In Oakwood I, you are producing off of the drilling unit, and when you have the second well right on the boundary, it is correlative rights issue that we are looking at, not the increased density issue once you are into long wall mining and you have isolated long wall panels.

MARK SWARTZ: Except---.

CLAUDE MORGAN: If I might explain how we got to this situation. This is in the eastern area of the Buchanan Mine and when we started drilling these wells, it was anticipated that mining was going to be in there much sooner. The mine has shifted to the north and out of this area, and we have backed off on the spacing, but the two wells in question here in the W where you have two wells in the unit, were drilled to degasify the

mains that were being driven in the barrier adjacent to the mains, and that is what pushed them to the window, was the mains...and they were being drilled in that short time frame ahead of mining at that time. The mine frame switched to the north and that is the reason you are seeing that the rest of these wells aren't going on to the east. We have scattered them on out and going on the eighty acre...eighty acre center. But the mine frame changed on this one which is the reason there is two wells here that was drilled before the mine plan changed.

MARK SWARTZ: Well, to respond to your comment, Sandy, 45...well, 36120B5C allows multiple wells in drilling units period. And my recollection is I would have to, you know, I have got---.

SANDRA RIGGS: Based on the mine plan.

MARK SWARTZ: Right. Right.

BENNY WAMPLER: That is just what he put in. I think that answers that.

MARK SWARTZ: In my recollection, I would have to go back and look at my files, but I think we have done this before and with frac---.

BENNY WAMPLER: Where you had a mine plan, where you had it introduced that you had a mine plan that was a requirement.

MARK SWARTZ: And that is why they are where they are, or the reason that Claude has just expressed. I guess, I misapprehended where you coming from.

BENNY WAMPLER: Now, we didn't have anything of record that you had...that this was caused by mine plan, and that's---.

MARK SWARTZ: I thought I asked Les that, but I may not have.

BENNY WAMPLER: If you did, I may have...I may have---.

SANDRA RIGGS: We usually have a mine plan attached that shows the long wall panels and where these units are located within the long wall panel, and that is missing in this package.

MARK SWARTZ: The reason it is not here is because we are not allocating under Oakwood II. We wouldn't typically submit that.

BENNY WAMPLER: All right. Any other questions?

(No audible response.)

BENNY WAMPLER: As to Unit X-36, do I have A recommendation...a motion?

CLYDE KING: Mr. Chairman, I move we approve.

DENNIS GARBIS: Second.

BENNY WAMPLER: Motion and second. Any further discussions?

(No audible response.)

BENNY WAMPLER: All in favor signify by saying yes.

(Members signify by saying yes.)

BENNY WAMPLER: Opposed say no. As to unit identified as W-36, do I have a motion?

BILL HARRIS: Mr. Chairman, I move for approval of that.

BENNY WAMPLER: Motion to approve.

DENNIS GARBIS: I second it.

BENNY WAMPLER: Motion and second, any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor signify by saying yes.

(Members signify by saying yes.)

BENNY WAMPLER: Opposed say no.

(No audible response.)

BENNY WAMPLER: You have approval. The next item on the agenda is a petition from Pocahontas Gas Partnership for pooling of a coalbed methane unit identified as Y-38. This is docket number VGOB-98-03/24-03...I am sorry, 0630. We would ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Leslie Arrington. If there is no objection, I would again suggest that since we have

got two stacked here with some overlapping tracts, that maybe it would make sense to call...also call item number---.

BENNY WAMPLER: Fifteen probably...Y-37---.

MARK SWARTZ: Twelve, Z-38. It's the one right below it. We could probably add some others, but I think maybe doing two related would make some sense.

BENNY WAMPLER: Okay.

DENNIS GARBIS: What about thirteen...that is right below that?

MARK SWARTZ: That would be fine with me as well.
What...do you mean---?

BILL HARRIS: Item---.

DENNIS GARBIS: Item twelve and thirteen, Z-38, AA-38?

MARK SWARTZ: Right, right. That would make sense as well.

BENNY WAMPLER: Is that okay with everyone?

MAX LEWIS: Z-38---.

BENNY WAMPLER: No...yeah, Z-38 and AA-38.

MAX LEWIS: Yeah.

BENNY WAMPLER: Okay, the...we will go ahead and call these other two units, identified as Z-38, docket number VGOB-98-03/24-0634 and Double A or AA-38, docket number VGOB-98-03/24-0635. We would ask the parties that wish to address the Board in

these matters to come forward at this time.

BENNY WAMPLER: Could you identify yourself for the record, please?

JASON SHORT: I am Jason Short, with...one of the heirs of Tom Short.

WALTER SHORT: I am Walter Short, one of the heirs of Tom Short.

TOM SHORT: I am Tom Short.

DOROTHY KEEN: I am Dorothy Keen, I am a heir of Tom Short.

ROBERT ROSE: I am Robert Rose. I own the property close to them.

HAROLD SHORT: I am Harold Short, one of the heirs of Tom Short.

BENNY WAMPLER: Are all of you that just identified yourself, are you concerned about the unit AA-38, which is docket number 0635, is that all of you...is that---.

WALTER SHORT: Right.

JASON SHORT: yes.

BENNY WAMPLER: I just want to make sure we zoom in on that one when we get to it.

JASON SHORT: Okay.

WALTER SHORT: Right.

BENNY WAMPLER: All right, Mr. Swartz, you may proceed.

MARK SWARTZ: Mr. Arrington, I will remind you are still under oath, okay?

LESLIE K. ARRINGTON: Yes.

LESLIE K. ARRINGTON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. You need state your name again?

A. Leslie K. Arrington.

Q. Who do you work for?

A. Consol.

Q. With regard to (inaudible), did you provide notice of the hearings in each instance?

A. Yes, I did.

Q. And how did you do that?

A. By certified mail, return receipt. It was mailed on February 20, 1998.

Q. With regard to all three units?

A. Yes.

Q. Okay. And have you have filed certifications of mailing with the Board today?

A. Yes, I have.

Q. Okay. Did you mail to the Short heirs?

A. Yes, I have.

Q. And are...I would refer you to Exhibit B-3 in unit AA-38. Does that indicate the person to whom you mailed notice to the Tom Short heirs?

A. Yes, I did...yes, it does.

Q. And who was that?

A. Tommy Short.

Q. And did he sign for that mail?

A. Yes, he did.

Q. On what date?

A. On February 23rd, 1998.

Q. Did you also provide notice by publication with regard to these three units?

A. Yes, we did, in the Bluefield Daily Telegraph on March 4, 1998.

Q. The same date of publication for all three?

A. Yes, it was.

Q. Okay. And have you filed a certificate from the

Bluefield Daily Telegraph of that publication with regard to each of these units?

A. Yes, we have.

Q. Okay. Are all three of these units eighty acre Oakwood I units?

A. Yes, they are.

Q. And are they all for frac wells to produce gas from below the Tiller Seam?

A. Yes, it is.

Q. Okay. With regard to Y-38, how many wells are proposed?

A. One.

Q. Z-38?

A. One.

Q. And AA-38?

A. One.

Q. Okay. Do you have...well, let's...let's just start with Y-38, and I'd refer you to the Exhibit A, page two.

A. Uh-huh.

Q. With regard to the coal under Y-38, how much of it do you have leased?

A. 100 percent.

Q. With regard to CBM leases from coal owners, how

much have you leased?

A. 100 percent.

Q. With regard to CBM leases from oil and gas owners, how much have you leased?

A. 91.125 percent.

Q. And what is the interest that is sought to be pooled in Y-38 and the percentage of that interest?

A. The interest is oil and gas interest and it's 8.875 percent.

Q. I'll ask you the same questions with regard to Z-38. First of all, how much coal is leased?

A. 100 percent.

Q. What percentage of CBM rights from coal owners have you leased?

A. 100 percent.

Q. And what percentage of CBM rights from oil and gas owners have you leased?

A. 71.65...65 percent.

Q. And what is it...what's the interest and the percentage that you're attempting to pool in...with regard to Z-38?

A. It's the oil and gas interest and it's 28.35 percent...28.35 percent.

Q. Lastly, with regard to the AA-38 Unit, how much of the coal is leased?

A. 100 percent.

Q. And what percentage of the CBM Rights from coal owners have you leased?

A. 100 percent.

Q. And the leases taken from oil and gas owners with regard to coalbed methane are what percent?

A. 93.7875 percent.

Q. And what is interest that you seek to pool and the percentage of that interest?

A. 6.2125 percent of the gas interest.

Q. In each of these packets, have you provided a well cost estimate?

A. Yes, we have.

Q. And with regard to Y-38, what is the cost estimate?

A. Two hundred and forty-five thousand, seven hundred and twenty-five dollars and seventy cents (\$245,725.70).

Q. With regard to Z-38?

A. Two hundred and sixty-one thousand, seven hundred and eighty-eight dollars and fifty-two cents (\$261,788.52).

Q. And lastly with regard to AA-38?

A. Two hundred and fifty-four thousand, two hundred and ninety-six dollars and twenty-eight cents (\$254,296.28).

Q. And those are costs for a well completed in frac?

A. Yes, it is.

Q. And the...each one of those wells cost estimates in each file shows a total depth, does it not?

A. Yes, it does.

Q. Okay, and did you prepare those estimates in each instance?

A. Yes, I did.

Q. And are those reasonable estimates of the cost?

A. Yes, it is.

Q. Is there...there is an Exhibit B-3 in each application?

A. Yes, it is.

Q. And that again would identify the net acres of the unleased owners or claimants in the unit?

A. Yes, it does.

Q. And it would also give a percentage of interest?

A. Yes, it does.

Q. And how is that percentage calculated?

A. The net acres divided by eighty gives you the percent of interest within the unit.

Q. Okay. And for example, if you look at the AA-38 Unit with regard to the Tom Short heirs, they have 3.28 acres within that unit?

A. That's correct.

Q. And what is their interest in the unit?

A. 4.1 percent.

Q. In terms of a royalty interest...the royalty allocated to this eighty acre unit, what will their interest in the royalty be, the Tom Short heirs?

A. It will be a conflicting interest.

Q. I understand, but what percentage would that conflict be?

A. 4.1 percent.

Q. Okay. In the event that they were going to participate, what percentage of the development cost would they be required to pay into escrow?

A. 4.1 percent of the cost of the well.

Q. Okay. And in the event they elected to be carry, that same 4.1 percent would be relevant to their carried interest?

A. It would.

Q. Is there an Exhibit E in the packet with regard to each of these three applications?

A. Yes, it is.

Q. And does that set forth a list of conflicting owners and claimants that would require escrow?

A. That's correct, it would.

Q. With regard to AA-38, are the Short heirs, is their interest going to escrowed?

A. Yes, it will be.

Q. And the conflict there is with whom?